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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRANDON FILION and RANDI)
FILION, husband and wife,)
Plaintiffs,)
v.)
NATIONWIDE E&S/SPECIALTY)
INSURANCE COMPANY, a foreign)
insurance company,)
CORPORATIONS A through E, and)
JOHN/JANE DOES 1 through 10,)
Defendants.)

NO.

**COMPLAINT FOR DAMAGES
AND REQUEST FOR JURY
TRIAL**

Plaintiffs Brandon Filion and Randi Filion, by and through their attorneys
Ryan D. Poole and Robert A. Dunn of Dunn & Black, P.S., allege as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiffs Brandon Filion and Randi Filion (“the Filions”) are now
and at all times relevant hereto were residents of Spokane County, Washington.

COMPLAINT FOR DAMAGES- 1

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1 They are assignees of CTGI Investments, LLC, a Washington limited liability
2 company, d/b/a CTGI Construction (“CTGI”), and Craig Monk (“Monk”) of the
3 claims alleged herein against Defendant. The Filions were awarded a judgment
4 (“Judgment”) against CTGI in a lawsuit (Underlying Suit) in Spokane County
5 Superior Court, Case Number 18-2-00019-4, which is attached hereto as
6

7 **Appendix A.**

8 2. Based on information and belief, Defendant Nationwide
9 E&S/Specialty Insurance Company is owned and/or operated by Nationwide
10 Insurance Company and/or Nationwide Mutual Insurance Company and/or
11 Nationwide Property and Casualty Insurance Company and/or some other
12 “Nationwide” insurance entity, and all of these companies conduct business in
13 Washington. Based on information and belief, and information available from the
14 Washington State Office of the Insurance Commissioner, Defendant has a
15 principal place of business in Ohio, but does business across the United States,
16 and to include in Spokane County, Washington.
17
18

19 3. Defendant Corporations A through E and Does 1 through 10 are
20 entities and persons unknown at this time. Upon information and belief, Plaintiffs
21 allege there may be other persons, partnerships and/or corporations having
22 responsibility and/or liability in connection with the claims for damages in this
23 case, and whose true identity is not presently known to Plaintiffs. The other
24
25

26 COMPLAINT FOR DAMAGES- 2

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1 persons that may be responsible and/or liable, personally, could include those
2 persons, including any adjuster and/or claim handling person, involved in any of
3 the evaluation, investigation and handling of the subject insurance claim made to
4 Defendant. When any such identity becomes known, these pleadings will be
5 amended to reflect such correct identity.
6

7 4. Material acts complained of herein occurred within Spokane County,
8 Washington.

9
10 5. This Court has subject matter jurisdiction under 28 U.S.C. § 1332
11 because there is diversity, with this controversy being between citizens and a
12 corporate entity of differing states, and the amount in controversy exceeding the
13 sum or value of \$75,000, exclusive of interest and costs.

14
15 6. Jurisdiction is also proper over Defendant under RCW 4.28.185.
16 Defendant, at all times material, has had continuous, systematic contacts, to
17 include business contacts, with Washington.

18
19 7. Jurisdiction over Defendant is also appropriate because it initiated
20 purposeful contact with the state of Washington and of such a quality that the
21 contact indicates Defendant could foresee the possibility of having to defend in a
22 court in Washington. The Filions' claims arise, to a material degree and at least
23 in part, from Defendant's contact with the state of Washington. Further, the
24 exercise of jurisdiction is reasonable considering any balancing of interests and
25

1 any claimed burden on the part of Defendant for having to defend in Washington.
2 Jurisdiction over Defendant named herein does not offend due process or any
3 notion of fair play and substantial justice.

4 8. Venue is proper in this Court under 28 U.S.C. § 1391, to include
5 under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or
6 omissions giving rise to this controversy and the Underlying Suit occurred in this
7 District.
8

9 **II. FACTS**

10
11 9. Plaintiffs incorporate by reference, and to be considered as fully set
12 forth herein, the preceding paragraphs.

13 10. Defendant issued CTGI and Monk an insurance policy (the “Policy”)
14 providing for a defense and indemnity for the claims made against CTGI and
15 Monk in the Underlying Suit, and the related Judgment. One such policy issued
16 by Defendant to CTGI and Monk is under Policy Number CPS2623633, which
17 was in effect from February 12, 2017, to February 12, 2018.
18

19
20 11. CTGI and Monk were doing business in residential construction in
21 Spokane County Washington, under the laws of the state of Washington, at all
22 relevant times. CTGI and Monk were insureds at the times relevant herein under
23 a policy of insurance issued by Defendant.
24

1 12. On or around March 16, 2017, the Filions entered into a construction
2 contract in which CTGI and Monk agreed to act as general contractor to construct
3 the Filions' residence. Subsequently, actions and omissions by CTGI and Monk
4 caused property damage to the Filions' property, to include their real property.
5

6 13. CTGI and Monk had insurance protection to cover the injury and
7 damage caused to the Filions' property, to include their real property, through
8 Defendant.
9

10 14. On or about January 3, 2018, the Filions filed the Underlying Suit in
11 Spokane County Superior Court alleging claims against CTGI and Monk. The
12 Underlying Suit contained allegations of property damage caused by the actions
13 and omissions of CTGI and Monk, with such damage being covered by the
14 insurance issued by Defendant to CTGI and Monk.
15

16 15. CTGI reported the Underlying Suit to Defendant in a timely manner
17 and cooperated, or otherwise was ready and willing to cooperate, with Defendant
18 at all material times. CTGI and Monk complied with any and all conditions of
19 the Policy.
20

21 16. The Underlying Suit contains allegations that trigger, and did trigger,
22 Defendant's duty to defend under the Policy.
23

24 17. The Underlying Suit contains allegations that trigger, and did trigger,
25 Defendant's duty to indemnify under the Policy.
26

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1 18. Defendant was in receipt of a copy of the Complaint for the
2 Underlying Suit in advance of December 4, 2017. In a letter from Defendant
3 dated December 4, 2017, attached hereto as **Appendix B**, sent by Defendant's
4 representative, Defendant stated that it is not obligated to defend or indemnify in
5 relation to the Underlying Suit, and therefore would not defend or indemnify.
6

7 19. Defendant did not properly investigate, evaluate, communicate,
8 negotiate, settle, pay, defend and/or otherwise properly handle the claims against
9 CTGI and Monk in the Underlying Suit. Defendant refused to defend. Defendant
10 refused to indemnify and failed to pay to settle within policy limits.
11

12 20. Defendant abandoned CTGI and Monk to confront the Underlying
13 Suit without any insurance protection. Defendant caused CTGI to be exposed to
14 expensive litigation, and to incur the related expense. Defendant caused CTGI
15 and Monk to be exposed to, and to incur, liability for the Judgment entered in
16 favor of the Filions in the Underlying Suit.
17

18 21. Insurance provided by Defendant, to include the Policy and/or
19 another applicable policy issued by Defendant, provides coverage for the claims
20 brought and alleged by Plaintiffs Filion against CTGI and Monk, and for the
21 property damage and loss suffered by the Filions.
22

23 22. Defendant refused to defend CTGI and Monk in relation to the
24 Underlying Suit.
25

26 COMPLAINT FOR DAMAGES- 6

1 23. Defendant refused to indemnify CTGI and Monk in relation to the
2 Underlying Suit.

3 24. Defendant failed to defend CTGI and Monk in relation to the
4 Underlying Suit despite claims alleged by the Filions against CTGI and Monk
5 being covered by the Policy.
6

7 25. Defendant failed to indemnify CTGI and Monk in relation to the
8 Underlying Suit despite claims alleged by the Filions against CTGI and Monk
9 being covered by the Policy.
10

11 26. Defendant, having acknowledged CTGI and Monk were insureds
12 under a policy issued by Defendant, wrongfully and unreasonably refused to
13 defend and indemnify CTGI and Monk, to protect CTGI and Monk from
14 exposure to expensive litigation and liability, to protect CTGI from the Judgment
15 entered against it in the Underlying Suit, or otherwise provide any benefits under
16 the Policy.
17

18 27. As a result of Defendant's refusal and failure to defend CTGI and
19 Monk in the Underlying Suit, CTGI and Monk were left without a defense and
20 exposed to expensive litigation, and they incurred related expense.
21

22 28. As a result of Defendant's refusal and failure to indemnify CTGI and
23 Monk, they were also exposed to liability, to include a Judgment entered against
24 CTGI and in favor of the Filions in the Underlying Suit.
25

26 COMPLAINT FOR DAMAGES- 7

1 Filions, and to include an obligation to pay for the liability incurred by CTGI
2 under the Judgment in the Underlying Suit.

3 **SECOND CAUSE OF ACTION**
4 **(Breach of Contract)**

5 34. Plaintiffs incorporate by reference, and to be considered as fully set
6 forth herein, the preceding paragraphs.

7
8 35. Nationwide's failure to provide CTGI a defense of the underlying
9 suit and denying coverage under the policy is a breach of its obligations to timely
10 investigate, defend, and pay claims in a timely manner and, therefore, a breach of
11 the insurance contract.

12
13 36. Defendant's actions and omissions have resulted in the breach of
14 express and implied terms of the insurance contract between Defendant and
15 CTGI, and Monk.

16
17 37. Defendant's actions and omissions have resulted in the breach of the
18 reasonable expectations of its insureds, CTGI and Monk.

19 38. Defendant's failure to defend and indemnify CTGI and Monk is, and
20 was, unreasonable, frivolous, and unfounded.

21
22 39. Defendant's actions and omissions constitute an unreasonable denial
23 of coverage and benefits.

1 40. Defendant's actions and omissions in breach of the insurance
2 contract caused injury and damages.

3 **THIRD CAUSE OF ACTION**
4 **(Bad Faith – Breach of Good Faith Duty)**

5 41. Plaintiffs incorporate by reference, and to be considered as fully set
6 forth herein, the preceding paragraphs.

7
8 42. Defendant's actions and omissions breached its duty to act in good
9 faith, to include, but not limited to, Defendant's refusal to defend CTGI and
10 Monk, and the placing of its own financial interests ahead of those of CTGI and
11 Monk.

12
13 **FOURTH CAUSE OF ACTION**
14 **(Violation of the Insurance Fair Conduct Act (RCW 48.30 et seq.))**

15 43. Plaintiffs incorporate by reference, and to be considered as fully set
16 forth herein, the preceding paragraphs.

17 44. Nationwide's failure to defend and indemnify CTGI and Monk, to
18 include the failure to pay to indemnify the amount of the Judgment in the
19 Underlying Suit, constitutes an unreasonable denial of coverage, an unreasonable
20 denial of a claim for benefits, and an unreasonable failure to pay, under RCW
21 48.30 et seq., IFCA, and related regulations.

22
23 45. Defendant's actions and omissions were unreasonable and in
24 violation of RCW 48.30 et seq., IFCA, and related regulations, causing injury,
25

26 COMPLAINT FOR DAMAGES- 10

1 harm, and damages. Plaintiffs are entitled to compensation, including treble
2 damages, attorneys' fees, costs, injunctive relief, and other relief as permitted by
3 statute.

4 **FIFTH CAUSE OF ACTION**
5 **(Violation of the Washington Consumer Protection Act (RCW 19.86 et seq.))**

6 46. Plaintiffs incorporate by reference, and to be considered as fully set
7 forth herein, the preceding paragraphs.

8 47. Defendant's acts or omissions constitute unfair and deceptive acts or
9 practices, in trade and commerce, that affect the public interest and that have
10 proximately caused damage.

11 48. Defendant's acts or omissions violate specific unfair claims practices
12 under WAC 284-30 et seq. and constitute per se violations of the CPA.

13 49. Defendant's actions and omissions in violation of RCW 19.86 et seq.
14 causing injury, harm, and damages. Plaintiffs are entitled to compensation,
15 including treble damages, attorneys' fees, costs, injunctive relief, and other relief
16 as permitted by statute.

17 **SIXTH CAUSE OF ACTION**
18 **(Negligence)**

19 50. Plaintiffs incorporate by reference, and to be considered as fully set
20 forth herein, the preceding paragraphs.

1 51. Defendant's actions as described herein were negligent and in
2 violation of its duties to exercise reasonable care, causing injuries and damages.

3 **SEVENTH CAUSE OF ACTION**
4 **(Estoppel)**

5 52. Plaintiffs incorporate by reference, and to be considered as fully set
6 forth herein, the preceding paragraphs.

7 53. As a result of its actions, omissions or conduct described herein,
8 Defendant is estopped from denying or limiting coverage, or otherwise asserting
9 any coverage defenses.
10

11 **IV. DEMAND FOR JURY TRIAL**

12 Under FRCP 38, Plaintiffs Filion request a jury trial with a jury of twelve
13 (12) members.
14

15 **V. RESERVATION**

16 Plaintiffs Filion reserve the right to amend and/or supplement the foregoing
17 Complaint as additional facts are obtained through discovery and/or investigation.
18

19 **VI. REQUEST FOR JUDGMENT**

20 Whereas, Plaintiffs Filion, as assignees of CTGI and Monk, request relief
21 as follows:
22

- 23 1. Nationwide be estopped from asserting any coverage defenses;
24
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1 2. For an award and entry of judgment against Defendant for all
2 economic, non-economic and compensatory damages, as well as exemplary
3 damages as may be warranted by Defendant's conduct;

4 3. For declaratory judgment in favor of Plaintiffs Filion, to include
5 judgment that Defendant owed a duty to defend CTGI and Monk in the
6 Underlying Suit;

7 4. For declaratory judgment in favor of Plaintiffs Filion, to include
8 judgment that the Policy issued by Defendant to CTGI and Monk provides
9 coverage for damages in the Underlying Suit;

10 5. For declaratory judgment in favor of Plaintiffs Filion, to include
11 judgment that Defendant owes a duty of indemnification, and CTGI and Monk
12 are entitled to indemnity by Defendant, for claims and allegations of damage
13 and/or loss suffered by Plaintiffs Filion;

14 6. For declaratory judgment in favor of Plaintiffs Filion, to include
15 judgment that Defendant is obligated to pay the amount of the Judgment in the
16 Underlying Suit;

17 7. For judgment against Defendant for general and special damages in
18 an amount to be proved at trial, including treble damages permitted pursuant to
19 RCW 48.30.015, and RCW 19.86.090;

1 8. For judgment that Plaintiffs Filion are entitled to execute on the
2 Policy for the Judgment awarded in the Underlying Suit to the Filions against
3 CTGI and all amounts owed;

4 9. For an award of the amounts incurred as costs and expenses to CTGI
5 and Monk in the Underlying Suit;
6

7 10. For judgment that Plaintiffs Filion are entitled to injunctive relief
8 against Defendant restraining and prohibiting it from practicing similar conduct,
9 acts and omissions as alleged herein;
10

11 11. For disgorgement for any payments made to Defendant by CTGI and
12 Monk;

13 12. For an award of Plaintiffs Filion's attorney fees and costs in this
14 action, including an award of attorney fees under all applicable case law (to
15 include Olympic Steamship v. Centennial Ins. Co., 117 Wn.2d 37 (1991)) and
16 statutes or any other legal and/or equitable grounds;
17

18 13. For pre- and post-judgment interest; and
19

20 14. For other relief as provided by statute, law, contract and/or is just
21 and equitable under the circumstances.
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1 DATED this 6th day of May, 2019.

2 DUNN & BLACK, P.S.

3 s/ RYAN D. POOLE

4 RYAN D. POOLE, WSBA No. 39848

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